Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

SPRINT COMMENTS

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May 23, 2005

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SUMMARY

Sprint urges the Commission to adopt without delay the comprehensive reform plan developed by the Intercarrier Compensation Forum (the "ICF Plan"). Although Sprint acknowledges that the ICF Plan involves significant compromises, it is a realistic means to correct the problems generated by a broken Calling-Party-Network-Pays ("CPNP") regime. Sprint submits that the ICF plan will benefit consumers, including those who reside in rural America, by reducing costs, encouraging competition, facilitating the introduction of new services, easing the integration of technologies, and stabilizing universal service. While the Commission considers proposals for comprehensive reform, however, it should not delay action on the long outstanding issues that are adversely impacting consumers today.

The current intercarrier compensation and interconnection regimes are affirmatively harming businesses and consumers, including rural consumers. The cost of service is being inflated and the ability of carriers to provide new services is being constrained. Sprint, for example, has been seeking Commission resolution of a controversy over its right to provide local wireless services in rural America for more than three years. The result of the Commission's inaction has been state-by-state litigation, the establishment of inefficient and costly network connections, and delayed entry into rural markets. This is but one example of the many disputes pending before the Commission which require immediate attention. Sprint requests that the Commission take expeditious action to resolve the disputes before it. Specifically, Sprint requests that the Commission take immediate action to address:

- The obligation of rural carriers to honor the rating and routing points designated by wireless carriers;
- The obligation of incumbent local exchange carriers to provide transiting services at cost based rates;
- The right of wireless carriers to receive compensation for the termination of traffic, including access charges;
- The obligation of VoIP providers to pay access charges when terminating traffic onto the PSTN; and
- The obligation of incumbent local exchange carriers to share the cost of facilities to connect two networks.

As a provider of local exchange services, interexchange services and wireless services, Sprint is keenly aware of the cost of these existing disputes as well as the broader costs of the CPNP regime. Artificial regulatory distinctions and random pricing structures are inhibiting Sprint's ability to integrate networks and provide customers with the services they demand. Moreover, conflicting and ambiguous rules are generating needless costs for the industry in administrative overhead, litigation and network construction. The Commission must act now to clarify existing law and proceed quickly to establish a rational system for tomorrow.

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SPRINT COMMENTS

Sprint Corporation, on behalf of its wireless, long distance, and local exchange divisions, submits the following comments in response to the Further Notice of Proposed Rulemaking issued in this docket.[1] Sprint urges the Commission to adopt without delay the comprehensive reform plan developed by the Intercarrier Compensation Forum (the "ICF Plan"), filed on November 5, 2004.[2] As a company operating wireless, ILEC, CLEC and IXC business units, Sprint has a unique and industry wide perspective on the costs and inefficiencies of the current regulatory regime. Sprint submits that the ICF Plan will benefit consumers, including those who reside in rural America, by reducing current costs, encouraging competition, facilitating the introduction of new services, easing the integration of technologies, and stabilizing universal service. Until comprehensive reform is adopted, however, the Commission should not delay action on the long outstanding items that are adversely impacting consumers today.

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1 *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, FCC 05-33, 20 FCC Rcd 4685 (March 3, 2005), *summarized in* 70 Fed. Reg. 15030 (March 24, 2005)("*Further Notice*" or "*FNPRM*").

2 Sprint was an active participant in the eighteen-month negotiations that led to the ICF Plan and is a signatory to that proposal.

I. THE DETERIORATING INTERCONNECTION AND INTERCARRIER COMPENSATION REGIMES ARE AFFIRMATIVELY HARMING AMERICAN CONSUMERS AND BUSINESSES TODAY

Although the Commission recognizes that the existing intercarrier compensation and interconnection regimes cannot be sustained in the current marketplace and that the need for reform is urgent,[3] it is important for the Commission to acknowledge that the problems identified in the *Further Notice* are more than mere internal industry disputes over the exchange of compensation. The existing intercarrier compensation and interconnection regimes are affirmatively harming American consumers today. The Calling-Party-Network-Pays ("CPNP") system inflates the cost of service and hampers the ability of carriers to offer new and innovative technological solutions to their customers. For these reasons, Sprint supports the quick adoption of the ICF reform proposal.

A. The Cost of Telecommunications Service is Being Inflated Through Unnecessary Administrative and Other Expense

CPNP regimes, by their very nature, impose significant costs on all carriers, and these costs are inevitably paid by customers. As discussed below, CPNP regimes create three kinds of costs: direct, indirect and hidden. Most if not all of these costs could be eliminated by adoption of a bill-and-keep regime such as that proposed by the ICF.

1. Direct Costs: billing and verification. The Commission recognizes that small carriers face "significant recordkeeping and compliance burdens under the current intercarrier compensation system, including determining the appropriate regulatory category for all traffic they send or receive, measuring the quantity of each type of traffic, and maintaining administrative systems and processes for intercarrier payments."[4] Large carriers face the same costs, but on a

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3 *See FNPRM* at ¶¶ 15-18, 37.

4 *See FNPRM*, Supplemental Initial Regulatory Flexibility Analysis at ¶ 193.

much larger scale. In fact, a national carrier such as Sprint exchanges some level of traffic with almost every other provider in the United States. Excluding resellers, there are over 1,300 incumbent LECs, over 600 competitive LECs, over 400 wireless carriers, and over 250 long distance carriers – or collectively, over 2,500 facilities-based providers.[5] Each of Sprint's operating divisions has entire departments to manage relations with these other carriers, including negotiation of interconnection or reciprocal compensation contracts, tariff review and challenges, invoicing and verification, *etc*. The resources involved amount to thousands of man-hours and millions of dollars of annual expense, all without adding any additional value to the end user customer. When considered on an industry-wide basis, the negative impact to consumer welfare is enormous.

Any CPNP system, by definition, entails transaction costs related to the creation and processing of invoices by carriers. These CPNP-related transaction costs are a significant burden on carriers and ultimately consumers. Specifically, every carrier sending a bill to another carrier for use of its respective network (*e.g.*, LECs, CLECs, CMRS) must:

- Install recording equipment in network nodes such as switches or routers;
- Develop and maintain data bases to store call detail records ("CDRs");
- Install and operate an internal network connecting network nodes where CDR records are created to the data bases where the CDRs are stored;
- Develop and maintain computer programs to generate invoices to other carriers, which requires that CDRs be screened and sorted by a variety of factors (*e.g.*, state/interstate, inter and intraLATA, *etc*.);
- Incur additional audit expenses to ensure that internal control, message recording, billing and accounting systems are operating properly;
- Prepare and deliver invoices;
- Budget and account for payments received;

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5 *See NPRM*, Supplemental Initial Regulatory Flexibility Analysis at ¶¶ 154-69.

- Maintain account management staff to answer billing inquiries and attempt to resolve billing disputes;
- Utilize legal and regulatory resources to resolve disputes that cannot be otherwise resolved (*e.g.*, PUC complaints, arbitrations, state and federal court litigation);
- Maintain voluminous billing records in compliance with record retention practices under state and federal law;[6]
- Establish financial reserves for disputed amounts that may never be realized; and
- Ensure that amounts recorded in financial records comply with GAAP and SEC regulations.

A no less burdensome and costly process is also imposed on carriers that receive these invoices. These include not only interexchange carriers ("IXCs") processing access bills, but CLECs, wireless carriers and ILECs that receive reciprocal compensation invoices. At a minimum, each carrier receiving an invoice must:

- Validate that the traffic being billed was generated by the carrier receiving the invoice;[7]
- Store and review call records of all traffic generated by the carrier to determine that the traffic volumes billed are accurate (this is in addition to the CDRs retained above for generating invoices);
- Review the tariffs and contracts of each invoicing party to determine that the correct rates and traffic factors have been applied (carriers such as Sprint exchange traffic with hundreds, if not thousands, of other entities); and
- Be prepared to engage in dispute resolution if the invoice contains inaccuracies.

The Sprint local, wireless and CLEC operations generate between 14,000 and 16,000 invoices to other carriers each month or roughly 180,000 invoices per year. Sprint's wireless division alone processes approximately 1.2 billion CDRs a month or roughly 15 billion records per

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[6] For example, the FCC recently required certain Price Cap ILECs to use 12-year-old billing records to meet certain requirements. *See 1993/1994 Annual Access Tariff Filings Order*, 19 FCC Rcd 14949 (2004).

[7] Inappropriate billing frequently occurs when the traffic is generated by a third party transiting another network, when the code holder is inappropriately identified as a result of LNP, when traffic is originated on a UNE platform or when there was simply a misapplication of carrier identification codes.

year. Sprint estimates that its CLEC, wireless, IXC, and local operating divisions receive between 11,000 to 15,000 invoices per month from other carriers. From one RBOC alone, the Sprint IXC operation receives over 200 invoices monthly. The cost of this administrative overhead is enormous.

2. Indirect Cost: contract negotiation, arbitration and litigation. Before invoices are even generated, carriers must establish applicable rates, the financial responsibility of the parties and the terms and conditions for the exchange of traffic. While certain services are governed by tariff, a large proportion of traffic is now exchanged under contracts established pursuant to sections 251 and 252 of the Act. For example, Sprint PCS, the wireless division, has negotiated more than 700 interconnection agreements. Likewise, the Sprint local division has more than 900 interconnection agreements in the eighteen states in which it operates and the CLEC operation has more than 300. Even after an agreement has been established, it is subject to renegotiation as its term expires or as changes in law occur. As a result, Sprint, like all national carriers, is engaged in continuous negotiations, with entire departments devoted to arguing over the rates, terms and conditions under which traffic will be exchanged with other carriers.

If two parties are unable to agree on appropriate rates and terms of service (and given that the parties are frequently direct competitors this is often the case),[8] then the parties must engage in arbitration and/or litigation to establish such agreements. The vast majority of these disputes concern rates, financial obligations and terms of interconnection, all of which would be resolved

[8] *See, First Local Competition Order,* 11 FCC Rcd 15499, 15566 ¶ 134 (1996) "Because the new entrant's objective is to obtain the services and access to facilities from the incumbent that the entrant needs to compete in the incumbent's market, the negotiation process contemplated by the 1996 Act bears little resemblance to a typical commercial negotiation. Indeed, the entrant has nothing that the incumbent needs to compete with the entrant, and has little to offer the incumbent in a negotiation."

by the ICF proposal. Arbitration requires parties to file a formal petition with a state commission, engage in discovery, file written testimony, present witnesses, cross-examine opposing witnesses at hearings, and file post hearing briefs. Once the state commission renders its decision, the parties must then negotiate conforming contract language for submission to the commission. Disputes frequently arise at this stage as well, requiring further proceedings before the state commission to resolve competing proposals for final contract language.

Given the statutory deadlines established for negotiation and arbitration under sections 251 and 252 of the Act,[9] this process can rarely be completed in less than a year (and this assumes neither party appeals the state decision to federal court). As each new technology and/or service comes into existence, this gating factor must be addressed. A carrier must review its existing agreements (frequently mounting into the hundreds) to determine if the new service or technology fits within one of the defined areas of traffic exchange permitted. If any ambiguity exists, the carrier must either renegotiate all of the existing agreements or risk disputes in the future. This, in turn, opens the possibility that the carrier will need to re-litigate contracts before dozens of state commissions with dozens of different parties before entering the market with a new service. Many products simply never reach the consumer because of this hurdle.

The complexity and delays of this process are often compounded by the fact that many of the applicable federal rules governing interconnection and intercarrier compensation are ambiguous, conflicting or simply silent. Accordingly, even if the two parties litigate a contract to conclusion before a particular state commission, the matter has not been resolved for all other

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9 47 U.S.C. §252(b) provides that an arbitration cannot be filed less than 135 days after a request for negotiation has been served on a LEC. A state commission must resolve the issues in dispute within nine months of the date of the request. *See id.* at §252(b)(4)(c). As a practical matter, however, many state commissions routinely ask the parties to extend this window.

states. Indeed, if negotiations are with a Regional Bell Operating Company ("RBOC"), Sprint may litigate the same issue, with the same party, in a dozen (or more) states. The same witnesses can find themselves flying from state to state, giving the same testimony and answering the same questions over and over. It is particularly in this area that the FCC could be of immediate assistance to the industry and American consumers. While Sprint supports a complete reform of this wasteful and time consuming system, the Commission could do much to speed products to market and reduce litigation and expense if it simply clarified its existing rules so that carriers' legal obligations were clear, as Sprint discusses in Part III *infra*.

Finally, once the appropriate agreements are in place, there are many grounds upon which a carrier may challenge the invoices generated.[10] Many of these disputes cannot be resolved without litigation or arbitration, and the cost of these proceedings is once again ultimately borne by consumers. Due in part to the extreme rate disparities identified in the *Further Notice* (coupled with the delays associated with litigation), these disputes frequently mean a shift of tens, sometimes hundreds, of millions of dollars between carriers. And, because the carriers often compete with each other – every dollar lost is a dollar gained by one's adversary – the incentive to settle litigation is greatly reduced. At least one commentator has observed that the tele-

[10] For example, the jurisdictional character of traffic cannot always be identified solely by the NPA-NXX of the customer. In the wireless world, the location of the caller (used to determine the jurisdiction of the traffic for intercarrier compensation purposes) is not directly related to the wireless phone number. Thus, a certain percentage of wireless calls that appear to be intrastate are, in fact, interstate or calls that appear to be interMTA are in fact intraMTA. The percentage used to allocate among traffic types or jurisdictions is currently estimated based upon traffic studies and costly data review. Even after such studies are conducted, the parties are frequently unable to reach agreement on the appropriate jurisdictional treatment of such traffic.

communications industry now spends more money each year litigating disputes than they do on research and development of new or improved products.[11]

Any system that relies upon competitors to compensate one another, regardless of the level of rates applied, threatens to deteriorate into this continuing cycle of disputes and counter disputes with litigation being the net result. All of these unproductive costs are paid for by consumers. The ICF Plan would eliminate these CPNP costs by eliminating the need for intercarrier billing, traffic segregation and complex interconnection rules. In contrast, most of the other proposals before the Commission would retain or expand these transactional costs.

3. Hidden Costs: exporting inefficiency. Not all carriers are equally efficient, and in ordinary markets inefficient service providers would be punished by a loss of customers resulting from higher prices. However, under a CPNP regime, inefficient carriers can hide their inefficiency by shifting some of their costs onto other carriers. Although consumers ultimately pay for this inefficiency, the market incentives are distorted. One carrier's customers effectively subsidize the inefficiency of other another carrier by allowing the inefficient carrier to keep retail prices low. In contrast, with a bill-and-keep regime, each carrier would recover its own network costs from its own customers (unless universal service subsidies are appropriate). Bill-and-keep would thus force less efficient carriers to become more efficient and cause all carriers to compete to provide service in the most efficient and cost effective manner. This in turn would result in reduced costs for all consumers and correspondingly lower prices.

[11] *See* Dr. Charles H. Ferguson, Brookings Institution, "Broadband Policy and the Future of American Information Technology," Testimony Before the Senate Commerce Committee, April 28, 2004.

B. THE INTRODUCTION OF INNOVATIVE NEW SERVICES IS BEING HAMPERED BY ANTIQUATED REGULATORY DISTINCTIONS

Convergence promises to bring a new level of products and services to consumers and businesses. The operational reality, however, is that convergence, and the corresponding promise of new services and efficiencies, is being slowed (if not prevented altogether) by a regulatory structure that stubbornly insists that each technology and service fit neatly into antiquated categories. The current regime is an immediate roadblock to the introduction of innovative services and bundles that would benefit customers and new market entrants.

Advances in technology are facilitating the development of single network service platforms that incorporate many different kinds of technologies, including unlicensed spectrum-based Wi-Fi capabilities, commercial mobile radio services ("CMRS"), IP-based broadband connections, and traditional circuit-switched LEC technology. Distance and location have become less and less relevant to the cost of service. Unfortunately, the innovative new services using these "convergence platforms" do not fit neatly within existing regulatory categories. This ambiguity, in turn, results in uncertainty over the cost of providing the service and creates regulatory/legal hurdles the new service must overcome. The overall impact is to inhibit entry and to increase the cost of service, to the detriment of customers.

A telecommunications service provider, like any business, develops a new product by focusing on customer needs. But unlike ordinary businesses, telecommunications providers must also consider and evaluate the regulatory implications of new service offerings. This regulatory analysis can be complex and time consuming when the proposed service would integrate different technologies subject to different rules and where as a result, the "proper" regulatory answer concerning the integrated service oftentimes is not readily apparent. This results in delay and the imposition of additional costs in product development cycle.

Even more significantly, the current disparate set of rules increase the cost of providing the integrated services. For example, strict compliance with current rules may require needless infrastructure including redundant trunk groups (*e.g.*, intraMTA reciprocal compensation trunk groups for wireless traffic, access trunk groups for long distance traffic and local interconnection trunk groups for wireline local traffic) so terminating carriers can "properly" rate the incoming traffic. This is required despite the fact that in the vast majority of cases the terminating carrier's costs are the same regardless of where or how the traffic originated.

Finally, even if a service provider is able to develop a new product and is willing to proceed notwithstanding the additional operating costs imposed by regulation, incumbent carriers can often slow service introduction by claiming that new types of traffic cannot be exchanged under existing arrangements. By raising regulatory objections, a carrier may delay entry of one of its competitor's new services as the objections are addressed in the regulatory process.

C. The Current Regime Harms Rural Consumers in Particular

The Commission has recognized that "customers of rural carriers tend to have a relatively small local calling scope and make proportionately more toll calls."[12] It has also noted that rural customers would benefit if rural LECs would increase the size of their local calling areas (because customers would then need to make fewer toll calls to communicate with others in their community of interest).[13] However, the very structure of the current regime virtually guarantees that rural LECs will not voluntarily enlarge their local calling areas. Rural LECs today often receive far more revenue from other carriers in access charges than they receive from their own

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12 *Universal Service Order*, 18 FCC Rcd 22559, ¶ 25 (Oct. 27, 2003).

13 *See Universal Service Order*, 17 FCC Rcd 24493, ¶ 26 (2002); *Western Wireless Order*, 16 FCC Rcd 48, 57 ¶ 21 (2000); *Twelfth Universal Service Order*, 15 FCC Rcd 12208, 12237-38 ¶¶ 56-58 (2000).

customers for the retail services they provide. According to NTCA, the *average* rural LEC receives nineteen percent of its total revenues from basic, EAS and optional local services. In contrast, inter and intrastate access charges generate twenty-six percent of total revenues.[14] Increasing the size of their local calling areas would necessarily result in the loss of significant revenues.[15] In short, the current intercarrier compensation regime gives these carriers an incentive to force their customers onto long distance networks to complete their calls.

Unfortunately, the same CPNP system discourages IXCs – which must charge geographically averaged rates -- from serving these rural areas.[16] Given the high access charges that rural LECs impose, competition among long distance carriers has been substantially reduced. IXCs cannot be expected to enter a market where the average interstate and intrastate access charges exceed the revenue they could recover from their toll customers. Rural LECs charge IXCs 4.5 cents per MOU on average simply to receive an interstate call (vs. the 1.3 cents charged by price cap carriers).[17] Rural LEC intrastate access charges are generally much higher than interstate rates, sometimes exceeding 8 cents per MOU.[18]

Finally, the current CPNP system encourages rural LECs to inhibit new entry that would give residents of rural areas more competitive choices. For example, as wireless coverage begins to penetrate rural markets, incumbent LECs face the loss of access revenues as customers use

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[14] *See,* NTCA, Intercarrier Compensation and Incumbent Rural Exchange Carriers, Ex Parte Presentation, at 7 (Jan. 6, 2004).

[15] According to NTCA, the rural LECs would lose on average $13 monthly per line if it eliminated intrastate access charges. *See id.* at 27.

[16] The FCC notes that 47 U.S.C. 254(g) has the practical effect of "discouraging IXCs from serving rural areas." *FNPRM* at ¶ 86.

[17] *See Trends in Telephone Service,* Table 1.4, at p. 1-8 (May 2004).

[18] *See, e.g.,* NTCA, Intercarrier Compensation and Incumbent Rural Exchange Carriers, Ex Parte Presentation, at 23 (Jan. 6, 2004).

their wireless phones to make "long distance" calls that once generated originating access fees on their landline network. In an attempt to prevent this diversion of revenue, some rural LECs have refused to honor wireless numbers, attempted to impose anticompetitive interconnection obligations (or refused to interconnect at all), or have attempted to shift the cost of exchanging traffic onto new entrants.[19] Once again, and as discussed in Part III below, this is an area in which the Commission could provide rural customers relief today by affirming the obligations of rural ILECs to honor wireless numbers. The incentive for such anti-competitive behavior, however, will not be removed until the Commission addresses the larger issue and the failure of CPNP intercarrier compensation regimes.

The current compensation and interconnection regime produces smaller calling scopes, fewer competitors and fewer services for rural America. The ICF Plan would correct this rural disparity by removing incorrect financial incentives and focusing public policy on appropriate USF funding. Under the ICF Plan, rural LECs would no longer be penalized for enlarging their small local calling areas. In fact, with the ICF Plan, rural LECs could readily offer their customers a LATA-wide local service, because their cost to provide LATA-wide local service would be no more than the cost for their current small local calling areas. The benefits to rural customers would be enormous. Of equal importance, the implementation of a bill-and-keep regime would open these markets to genuine competition and the resulting benefits to rural customers.

II. AMONG THE PLANS IDENTIFIED BY THE COMMISSION, ONLY THE ICF PLAN PROPOSES A GLOBAL, RATIONAL, AND WORKABLE SOLUTION

Sprint supports the ICF Plan because of all the reform proposals submitted to the Commission (including NARUC, a CLEC coalition, several rural LECs and Western Wireless), only

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[19] *See, e.g.,* Sprint Petition for Declaratory Ruling Regarding the Rating and Routing of Traffic by ILECs, CC Docket No. 01-92 (May 9, 2002).

the ICF Plan provides a comprehensive solution with a concrete path toward a more rational regime. The ICF Plan addresses the inherent flaws of the current system; stabilizes universal service funding; proposes a detailed transition plan; and complies with existing law. While others have made proposals that cater to a particular industry segment, the ICF Plan was developed with an industry-wide perspective.

Each industry participant understandably views reform from the perspective of its own self-interest. Sprint, however, is unique in that its self-interest reflects the entire range of telecommunications services. Sprint is an incumbent local exchange carrier in some of the most rural portions of the country with offices serving as few as 100 access lines. Sprint also operates ILEC services in large metropolitan areas and is the fifth largest ILEC in the United States. Sprint's CDMA network serves more than 26 million wireless subscribers, and Sprint operates the third largest IXC by revenue. Sprint has an active CLEC operation and is currently working in partnership with cable companies to enable cable entry into the market. Accordingly, Sprint, more than any other carrier, saw the importance of rationalizing the regulatory conflicts between industry segments and the opportunity presented by a regulatory structure that permitted the integration and maximization of existing networks.

Sprint submits that any reform plan must address three fundamentally interdependent areas: intercarrier compensation, network interconnection and universal service. Any proposal that fails to address all three subjects cannot succeed. Network interconnection and transport rules are intimately related to and directly affect intercarrier compensation. Likewise, any changes to intercarrier compensation revenues must consider the consequences to universal service. Only one plan submitted in the record – the ICF Plan – addresses all three subjects with any degree of specificity.[20]

Other than ICF, only NARUC has attempted to submit a relatively comprehensive proposal for public comment. Sprint applauds the NARUC Task Force on Intercarrier Compensation for devoting so much time and energy to this critically important subject. Unfortunately, the NARUC proposal falls short of its laudable goal of providing a comprehensive solution. First, the plan is not internally consistent, because, as NARUC acknowledges, it is the result of a "pick-and-choose" method – namely taking "elements from several plans proposed by industry groups" – rather than developing a plan holistically, from the ground up.[21] Second, NARUC states that its plan is only a draft and is "still being reviewed and refined."[22] It is difficult to comment, much less analyze the financial impacts, of a plan that is still being revised.

In addition, Sprint has several fundamental concerns with the intercarrier compensation and universal service components of the NARUC proposal, including:

- NARUC does not propose ***unified*** intercarrier compensation reform because it would maintain a separate regime for intrastate access traffic (unless a state opts into the national plan), thereby maintaining all of the problems with the current regime and undermining one of the major reasons for reform.
- The proposal would maintain charges for call termination and thus retain all the problems with such charges, including:
  - The current system's sizable administrative costs associated with recording, billing, auditing and paying for traffic exchange;
  - The undisputed terminating access monopoly problem and the corresponding need for regulation of intercarrier relationships.

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20 Sprint acknowledges that two weeks ago Frontier submitted what may be a comprehensive proposal. Sprint has not had an opportunity to review, much less analyze, this recent Frontier proposal. If necessary, Sprint will address this plan in its reply comments.

21 *See* NARUC Cover Ex Parte Letter at 2 (March 1, 2005).

22 *Id.* NARUC filed a further revised proposal within the past few days which Sprint has not had the opportunity to review in any detail.

- Although fundamental reform is needed immediately, NARUC's proposal could not be implemented for years because of the numerous additional proceedings that it recommends, many of which must be conducted serially:
  - Any FCC reform proposal would be referred to the Federal-State Joint Board before the plan is finalized;[23]
  - After the FCC adopts a final plan, implementation issues would then be referred to another Joint Board proceeding;[24]
  - The FCC would conduct a new cost-allocation proceeding (and NARUC does not indicate whether another Joint Board proceeding would be necessary);[25]
  - The FCC would conduct another proceeding to determine how universal service subsidies should be distributed if a state chooses not to participate in the block grant proposal (and again, NARUC does not indicate whether yet another Joint Board proceeding would be necessary);[26]
  - Each state would then commence a new proceeding to determine "the effect of the plan on local exchange rates;"[27]
  - And finally, the plan still could not be implemented until *each* state analyzes the cost impact of the plan with respect to *each* carrier.[28] NARUC does not identify what happens to carriers that a state determines should be exempt from the plan.

Sprint acknowledges that the ICF Plan includes numerous compromises. But Sprint also realizes that no global solution will satisfy the interests of all industry segments or please every state commission. As almost all parties concede, fundamental reform is desperately needed and needed now. Sprint submits that it is more important for the Commission to act expeditiously in adopting meaningful and comprehensive reform than to litigate for years each component of a reform plan while each industry segment pursues its unique agenda. The Commission has noted

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23 *See* Appendix C, ¶ 1 at 11.

24 *See* PowerPoint Presentation at p. 20.

25 *See* Appendix B, § IX at p. 8.

26 *See* Appendix C, ¶ 10 at 10.

27 *See* Appendix B, § IX(D) at p.8.

28 *See* Appendix B, § IX(A) at p. 8.

before the adage, "Let not the perfect be the enemy of the good."[29] This proceeding, involving universal service *and* intercarrier compensation *and* network interconnection, makes that old adage even more relevant.

III. THE COMMISSION SHOULD HELP CONSUMERS AND CARRIERS BY RESOLVING DISPUTES OVER EXISTING REQUIREMENTS WHILE THIS DOCKET IS PENDING

Sprint acknowledges that the issues in this reform proceeding are complex, and the decisions the Commission makes will impact all segments of the telecommunications industry. While Sprint wholeheartedly agrees with Commissioner Copps that intercarrier compensation reform should be the Commission's "number one telecommunications priority,"[30] it may be difficult for the Commission to complete its deliberations and initiate comprehensive reform by the end of the year. It is, moreover, inevitable that any reform package that the Commission ultimately adopts will include a transition plan, meaning that new rules that might resolve existing controversies may not take effect for several additional years.[31]

In the meantime, carriers continue to re-litigate in numerous states the same issues regarding the requirements of existing federal law, activity that needlessly wastes resources and imposes costs that inevitably are passed through to customers. The ICF Plan proposes interim resolutions for some – but not all – of the issues surrounding interpretation of current FCC rules precisely to address the industry impact of continued uncertainty in these areas. The resolution

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[29] *See MAG Order*, 16 FCC Rcd 11244, 11248 ¶ 9 (2001). Indeed, appellate courts have admonished the FCC that "the best must not become the enemy of the good, as it does when the FCC delays making any determination while pursuing the perfect tariff." *MCI* v. *FCC*, 627 F.2d 322, 341-42 (D.C. Cir. 1980).

[30] *See FNPRM*, Separate Statement of Commissioner Copps.

[31] For example, the new network "edge" interconnection rules that the ICF proposes would not be implemented until the third year of the Plan.

of these interim disputes was to occur by July 1, 2005 under the ICF Plan and was one important consideration in Sprint's agreement to join the ICF. Moreover, there are other issues on which the ICF Plan is silent and on which Commission action is needed. Expeditious Commission resolution of all these outstanding controversies would not only benefit customers, but would also enable all industry participants to avoid needless litigation and crippling business uncertainty while longer-term reform is being pursued. In the end, it would be customers who would benefit by Commission clarification of existing law.

Sprint below identifies certain issues that have been pending before the Commission for an extended period of time, the resolution of which would bring immediate benefits for consumers. The Commission could act on these issues, which have been fully briefed, without prejudicing its actions on any going forward reform. It would simply be clarifying the application of current rules, not tying its hands on future action. Indeed, by clarifying the application of these rules, Commission action may give various parties additional incentives to find compromise solutions.

A. <u>Rating and Routing of Wireless Traffic</u>. Sprint PCS and other wireless carriers have been rapidly expanding the geographic coverage of their networks, including in rural America. However, Sprint's ability to use its network in order to sell services to residents of these rural areas – and, thereby, compete directly with the incumbent carrier – is greatly inhibited because, absent the establishment of direct connections, many incumbents refuse to recognize the local telephone numbers that Sprint has acquired. As a practical matter, few residents of rural areas will consider Sprint's service if family and neighbors must incur toll charges in calling a Sprint wireless customer who is located across the street from the caller.

Sprint brought this matter to the FCC's attention three years ago.[32] Similar issues were raised in a separate petition filed sixteen months ago, resulting in yet another round of comments (which largely repeated the pleadings filed in response to the Sprint petition).[33] The Commission has repeatedly recognized the pendency of Sprint's petition, noting that it addresses one of "the most contentious issues in interconnection,"[34] yet no action has been taken. In the meantime, Sprint continues to be prevented from providing local wireless services to many rural areas within its coverage due to the lack of resolution of this issue. Moreover, multiple state commissions have been forced to address this issue with some decisions being appealed as high as the federal circuit court of appeals.[35]

The ruling that Sprint seeks does not raise a novel issue of federal law. To the contrary, the FCC General Counsel has stated that the rules Sprint is asking the Commission to reaffirm are "long-standing;"[36] indeed, they have been utilized since the inception of the wireless industry over 20 years ago. Furthermore, the Commission has already ruled that rural LECs must honor local telephone numbers that a customer ports to a wireless carrier.[37] It is now time for the

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32 *See* Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (May 9, 2002); Public Notice, *Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs,* CC Docket No. 01-92, DA 02-1740 (July 18, 2002).

33 *See* Public Notice, *Pleading Cycle Established for Petition of ASAP Paging, Inc. for Preemption of the Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Providers,* WC Docket No. 04-6, 19 FCC Rcd 936 (Jan. 20, 2004).

34 *FNPRM* at ¶ 91. *See also id.* at n.575; *Intermodal Porting Order,* 18 FCC Rcd 23697, 23704 n.50, 23708 n.75, 23713 n.104 (2003); *Wireless Porting Order,*18 FCC Rcd 20971, 20978 n.38 (2003).

35 *See, Atlas Telephone v. Corporation Commission of Oklahoma,* 309 F.Supp.2d 1313 (W.D. OK 2004), *aff'd,* 400 F.3d 1256 (10th Cir. 2005)

36 *See* FCC Intermodal Porting Brief, No. 03-1414, at 32, 33 (D.C. Cir., filed July 9, 2004).

37 *See Intermodal Porting Order,* 18 FCC Rcd 23697, 23698 ¶ 1, 23706 ¶ 22 (2003).

Commission to reaffirm that rural LECs have the same obligation for non-ported numbers that wireless carriers obtain in compliance with FCC rules.

B. <u>Prices for RBOC Transit Services</u>. Four years ago, the Commission asked for comment on whether new rules were necessary for RBOC transit services.[38] Three years ago, the Wireline Bureau indicated this issue remained unresolved because the Commission has "not had occasion to determine whether incumbent LECs have the duty to provide transit service under" Section 251(c)(2) of the Act:

> In the absence of such a precedent or rule, we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates.[39]

AT&T asked the Commission to reconsider this holding three years ago.[40] This petition remains pending.

In the meantime, there are now proceedings in multiple states where RBOCs are seeking to impose non-cost-based (or "market") rates for their transit services. In each one of these state proceedings, CLECs, wireless carriers and RLECs are raising the same issue pending before the Commission: as a matter of federal law, are RBOCs required to offer transit services and if so, at what rate? Sprint believes that the answer to this question is clear. The Commission should resolve the question once and for all. Sprint submits that it makes no sense to force carriers to relitigate the identical issue of federal law in multiple states.

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38 *See Unified Intercarrier Compensation Regime NPRM*, 16 FCC Rcd 9610, 9634 ¶ 71 (2001). The FCC recently asked parties to refresh the record on the transit services issue. *See ICC Reform FNPRM* at ¶¶ 125-33.

39 *Virginia Arbitration Order*, 17 FCC Rcd 27039, 27101 ¶ 117 (2002).

40 *See* AT&T Petition for Reconsideration, CC Docket No. 00-251, at 7-8 (Aug. 16, 2002).

It is important to emphasize that the availability of RBOC transit services at reasonable prices is, according to rural LECs, "vital" and "critical" in serving rural America.[41] As one rural LEC trade group has noted, the RBOC transit network infrastructure "cannot be either economically or readily duplicated."[42] Yet, as this association further observes, the RBOCs are seeking to price their transit services at "market" rates in an attempt to "exploit" their effective monopoly over "this critical network infrastructure":

> A tandem owner may decide to charge exorbitant transiting rates, in effect forcing rural ILECs to pay excessive amounts for a service where there are no other available options.[43]

Sprint, therefore, urges the Commission to address promptly the issue whether RBOCs are required by the Act to offer their transit services pursuant to the pricing standards contained in the Act and its implementing regulations that have been affirmed on appeal.

C. <u>Access Charges – VoIP Providers</u>. The Commission recognized seven years ago that it was unclear whether existing rules required Voice over Internet Protocol ("VoIP") providers to pay access charges,[44] and industry began asking the Commission to resolve this issue six years ago.[45] Additional petitions were subsequently filed raising the same issue, and last year the Commission commenced a rulemaking proceeding to develop new rules.[46] However, the Com-

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41 *See* National Telecommunications Cooperative Association ("NTCA"), *Bill and Keep: Is It Right for Rural America*, at 40 (March 2004), *appended to* NTCA Ex Parte, CC Docket No. 01-92 (March 10, 2004).

42 *Id.* at 41.

43 *Id.*

44 *See Universal Service Report to Congress*, 13 FCC Rcd 11501, 11544-45 ¶ 91 (1998)("Stevens Report").

45 *See* U S WEST Petition for Expedited Declaratory Ruling, *Petition for Declaratory Ruling Affirming Carrier's Carrier Charges on IP Telephone* (April 5, 1999).

46 *See IP-Enabled Services NPRM*, 19 FCC Rcd 4863, 4884-85 ¶ 32, 4904 ¶ 61 (2004).

mission has yet to address whether or not access charges apply under existing law, even though it recognized four years ago that VoIP was beginning to "threaten to erode access revenues,"[47] and one year ago it noted that VoIP has since then had this very effect.[48]

The ICF Plan takes three years to equalize the charges for various forms of traffic, and is silent on the applicability of the various forms of intercarrier compensation to VoIP in the meantime. With the burgeoning of VoIP that is taking place in the marketplace today, the industry is caught up in a guessing game of enormous business consequences – one that cannot await a lengthy phase-in of comprehensive reform. Sprint urges the Commission to address promptly this straightforward issue of federal law.

D. <u>Access Charges – Wireless Carriers</u>. In today's CPNP regime, incumbent LECs receive access charges from long distance carriers for terminating interstate and intrastate toll calls. Four years ago, the Commission established a set of rules governing CLEC access charges that assured CLECs of access revenues comparable to LECs (*e.g.* CLEC rates effectively capped at ILEC levels).[49] The FCC commenced over nine years ago a rulemaking to determine how wireless carriers can recover access charges, "tentatively conclud[ing] that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks":

> We tentatively conclude that any less favorable treatment of CMRS providers would be unreasonably discriminatory, and would interfere with our statutory objective and ongoing commitment to foster the development of new wireless services such as CMRS.[50]

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47 *See Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, 9657 ¶ 133 (2001).

48 *See IP-Enabled Services NPRM,* 19 FCC Rcd at 4866 n.11.

49 *See CLEC Access Charge Order*, 16 FCC Rcd 9923 (2001).

50 *CMRS Interconnection NPRM*, 11 FCC Rcd 5020, 5075 ¶ 116 (1996).

Yet, the Commission has never completed this rulemaking – with the result that wireless carriers still do not receive access charges.[51] Intermodal competition can never flourish if ILECs receive revenues from other carriers (thus enabling them to set retail rates at a correspondingly lower level) when wireless carriers are prevented from recovering their costs in the same manner.

E. <u>Shared Interconnection Facility Charges</u>. Implementing the provisions of the Telecommunications Act of 1996, the FCC established rules requiring ILECs to share the cost of facilities that are used to interconnect two competing networks.[52] Indeed, the Commission affirmatively prohibited ILECs from attempting to impose these costs of transport onto other providers.[53] The charge for these facilities was to be based on forward looking costs.[54] The fundamental goal of these rules was to place new entrants and ILECs in the role of co-carriers with equal financial responsibilities for the costs of interconnecting their networks. Yet more than eight years later, most ILECs continue to refuse to recognize this basic principle of co-equal networks, with the result that carriers are litigating the issue on a state-by-state basis.

Continued abuses such as these have hobbled competitive entry into the telecommunications market since the 1996 Act was passed. The FCC should act now to prevent such practices from further harming competitive entry while these reform efforts are pending. Sprint reiterates

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51 Three years ago, the FCC held that, so long as its Docket 95-185 rulemaking was pending, wireless carriers cannot collect access charges unless IXCs agree to pay them. *See Wireless Access Charge Declaratory Order*, 17 FCC Rcd 13192 (2002).

52 47 C.F.R. §51.709(b) provides "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."

53 47 C.F.R. §51.703(b) provides "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

54 *See* 47 U.S.C. §252(d)(1).

that it supports quick enactment of the ICF Plan, including the interim fixes identified therein, but Sprint strongly urges the Commission not to allow the existence of this docket and the possibility of future reform to prevent it from addressing the real competitive concerns before it today.

IV. CONCLUSION

Sprint agrees with Commissioner Copps that intercarrier compensation reform should be the FCC's "number one telecommunications priority."[55] Given the revolutionary changes in technology and in customer expectations, Sprint urges the Commission to adopt bold reform that addresses the defects in today's broken system in a fundamental manner. Sprint also urges the Commission not to allow pending reform efforts to divert its attention from the critical need to address real problems existing under today's rules. Sprint, therefore, respectfully requests that the Commission adopt the ICF Plan in an expeditious manner and quickly address the pending issues impacting consumers today.

Respectfully submitted,

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May 23, 2005

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55 *See FNPRM*, Separate Statement of Commissioner Copps.